
OPINION OF THE PUBLIC ACCESS COUNSELOR

TIMOTHY T. GREEN,
Complainant,

v.

CITY OF UNION CITY,
Respondent.

Formal Complaint No.
18-FC-16

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the City of Union City (“City”) violated the Access to Public Records Act¹ (“APRA”). Clerk-Treasurer Jan Walters responded to the complaint on behalf of the City. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on January 29, 2018.

¹ Ind. Code §§ 5-14-3-1 to -10

BACKGROUND

Timothy T. Green (“Green”) filed a formal complaint alleging the City of Union City (“City”) violated the Access to Public Records Act (“APRA”) by improperly denying access to public records.

On January 12, 2018, Green submitted a public records request to the Union City Clerk-Treasurer requesting the following:

1. Pursuant to Union City Ordinance 32.82, the members of the Redevelopment Commission and Union City Ordinance 32.90, the creation of the Department of Economic Development, controlled by the Economic Development Commission (for its establishment), I request a copy of the appointment order or the document that lists and/or appointed Mr. Rob Lykins as President of the Union City Community Economic Development Committee, as well as, the appointment of his successor that marks when Mr. Lykins term ended.
2. Pursuant to the accountability and compliance of Eco Vehicle Systems (EVS) with the loan between the City of Union City and EVS (dated November, 2016), specifically EVS obligations listed in paragraph 5.01 of the loan document, please provide a copy of the document submitted by EVS to the City that was due on March 1, 2017 that provides the initial annual project update showing the prior year’s headcount and associated wages.
3. Please provide a copy of the public notice that advertised the executive session concerning the economic development of Eco Vehicle Systems, LLC that occurred on or about November 14, 2016 that occurred prior to the Union City Council meeting (I believe) on the same date that approved the funding for the economic development loan to EVS.
4. Concerning the executive session that occurred on or about November 14, 2016 concerning the economic development plan with Eco Vehicle Systems, LLC, please provide the memorandum that states the purpose of that meeting and a list of the attendees, and the subjects discussed. While I understand executive session meeting content may not be publicly disclosed, I further request a copy of that content, if it is deemed eligible for public disclosure.
5. Pursuant to Union City Ordinance 34.12, please provide the record(s) or document(s) that show(s) the actual Union City Council vote to appropriate monies from the Rainy Day Fund, and the associated Council finding that the appropriation was consistent with the intent of the fund, for the appropriation of funds for the loan repayment for the economic development loan (\$250,000) to Eco Vehicle Systems.

Green contends that the City improperly denied his request for public records and continually refuses to provide public records related to the City’s relationship with Eco Vehicle

Systems. As a result, Green filed a formal complaint with this Office just six business days after submitting his public records request to the City. On January 29, 2018, this Office received Green's complaint and notified the City.

In a letter dated February 12, 2017, Walters responded to Green. Specifically, the clerk responded to each of his five requests in turn:

1. The City of Union City would not have any records regarding the Union City Community Economic Development Committee. This committee has no affiliation with the City of Union City.
2. I have tried to answer this question for you several times. There was no document due March 1, 2017 from EVS to the City. The first report is due March 1, 2018.
3. Please see attached.
4. Please see attached.
5. \$150,000 of the Rainy Day fund was appropriated for 2017 by Ordinance 2016-20. I am attaching a copy of this ordinance for your reference.

Based on the evidence, it appears the Clerk fulfilled requests three through five.

On February 16, 2018, the Union City Clerk-Treasurer Jan Walters filed an answer to Green's complaint. Although Walters contends that she has historically responded to all of Green's records requests, she concedes that she did not respond to Green's records request from January 12, 2018.

Walters noted that some of Green's requests are for documents that "he feels the city should have" but it does not. Specifically, Walters cites items 1 and 2 in Green's January 12 request as support for this claim.

ANALYSIS

1. The Access to Public Records Act ("APRA")

APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." Ind. Code § 5-14-3-1. The City of Union City ("City") is a public agency for the purposes of the APRA; and thus, subject to the Act's requirements. Ind. Code § 5-14-3-2(n). As a result, any person has the right to inspect and copy the City's disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. *See* Ind. Code § 5-14-3-3(a).

A public agency is required to respond to a written request that has been mailed within seven (7) days after it is received or the request is deemed denied. *See* Ind. Code § 5-14-3-9(c). If a request is hand-delivered, an agency is required to respond within twenty-four (24) hours or the request is deemed denied. *See* Ind. Code § 5-14-3-9(b). Critically, the response required by an agency to avoid a deemed denial can be a simple *acknowledgement* that the request has been received. In other words, a response is not necessarily synonymous with production of the requested records. The obligation to fulfill a request is mutually exclusive from an obligation to acknowledge.

What is more, if a records request is not denied, an agency must produce requested records within a *reasonable time*. Ind. Code § 5-14-3-3(b).

Here, in this case, the City readily admits that it did not respond to Green’s public records request at all. As a result, the City has violated APRA. Indeed, the City’s claim—if accurate—and the associated frustration about Green besieging it with requests for records it does not maintain, is understandable. Even so, it does not justify abdicating its duties to acknowledge or otherwise respond to a public records request.

This Office must emphasize to the City that to properly deny a written public records request, it must do so in writing, cite the statutory exemption for withholding the requested record—or inform the requestor that the requested records do not exist—and provide the name and title of the person responsible for denying the request. *See* Ind. Code § 5-14-3-9.

If an agency ignores a public records request outright, it usually only serves to cause aggravation in the requestor, which frequently results in a more concerted effort by the requestor to irk the agency or official responsible.

Lastly, in the narrative of his formal complaint Green asserts—more than once—that this Office both *requested* and *advised* him that in order to obtain the records he is requesting that he must “link [his] requests to public laws and ordinances that indicate the documents and records exist and should be provided.” This misconstrues the recommendation offered to Green.

To clarify, this Office informed Green that mere demands for *information* or answers to his questions, without more, do not trigger a public agency's duties under APRA. Rather, a person must request a *public record* under the Act to trigger the public agency's statutory duties. Toward that end, as an example, this Office acknowledged that if a statute, rule, or ordinance requires a particular public record to be created or maintained, then Green could request that record to ascertain the answer to his inquiries.

This Office cannot agree, and did not suggest that the public must *link*—whatever that may mean—a public records request to a specific statute for the record to be disclosable.

In any case, an inquiry for general information—i.e., “how did the city council vote on the ordinance?”—is *not* a request for a public record. Conversely, a request for the meeting minutes from the relevant council meeting, which contain the vote tally, *is* a public records request.

Moreover, an agency need not create or obtain a record to fulfill a request if that record is not created, received or maintained by the agency.

CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that the City of Union City violated the Access to Public Records Act by failing to respond to the Complainant's public records request, but not necessarily by failing to fulfill the request.

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized flourish at the end.

Luke H. Britt
Public Access Counselor